



Application Decision

by **Richard Holland**

Appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: **5 November 2015**

Application Ref: COM 717
Hempton Common, Norfolk

Register Unit No: CL293

Commons Registration Authority: Norfolk County Council

- The application, dated 20 July 2015, is made under Section 38 of the Commons Act 2006 (the 2006 Act) for consent to carry out restricted works on common land.
 - The application is made by Freedom Group on behalf of UK Power Networks.
 - The works comprise the installation of a new 3x3m ground mounted substation to connect to existing underground cables. The wooden H-Pole mounted transformer will be removed and replaced with a single wooden electricity pole and two stay wires. The working area will cover 20x20m for the duration of the works. Protective fencing will be erected around the working area of the substation and pole erection site. Once the works have been completed, all safety fencing will be removed.
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Decision

1. Consent is granted for the works in accordance with the application dated 20 July 2015 and the plan submitted with it subject to the following conditions:
 - i. the works shall begin no later than 3 years from the date of this decision;
 - ii. the temporary fencing shall be removed within one month of completion of the works;
 - iii. the ground mounted substation shall be dull brown in colour;
 - iv. screen planting/landscaping shall be carried out in the first planting season following the commissioning of the substation.
2. For the purposes of identification only the location of the proposed works is shown in red on the attached plan.

Preliminary Matters

3. Since making the application, the applicant has, at the request of Ms Sarah, Price Norfolk County Council Public Rights of Way Officer, adjusted the siting of the substation and the single wooden pole so that it is moved away from a registered public right of way known as Hempton Footpath 2. I do not consider that any interested party has been prejudiced by this amendment.
4. I have had regard to Defra's Common Land Consents Policy Guidance¹ in determining this application under section 38, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its

¹ Common Land Consents Policy Guidance (Defra July 2009)

merits and a determination will depart from the guidance if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the guidance.

5. This application has been determined solely on the basis of written evidence.
6. I have taken account of the representations made by the Open Spaces Society, Ms Sarah Price Norfolk County Council Public Rights of Way Officer, and Historic England.
7. I am required by section 39 of the 2006 Act to have regard to the following in determining this application:-
 - a. the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);
 - b. the interests of the neighbourhood;
 - c. the public interest;² and
 - d. any other matter considered to be relevant.

Reasons

The interests of those occupying or having rights over the land

8. The landowner has been consulted about the proposed works and has not objected. The applicant has advised that the common rights are not exercised and no commoner has objected to the application. There is no evidence before me therefore that the works will harm the interests of persons occupying or having rights over the land and I am satisfied that they will not.

The interests of the neighbourhood

9. The applicant has advised that the existing pole mounted transformer is currently overcrowded, therefore the ground mounted GRP substation is required to alleviate the load on the pole, thereby improving the reliability of supply in the area. The substation will occupy a relatively small area and the works will take place over a relatively short period of time. The minimum amount of safety fencing will be used and will be removed following completion of the works.
10. Consequently, although the works may have some effect on local people's use of the common, I do not consider that this will be to any great degree and I accept that the works are needed to secure and improve the existing electricity supply in the local area which will benefit local residents.

The public interest

The protection of public rights of access

11. The Open Spaces Society (OSS) has no objection to the application provided the common is fully reinstated after the works are complete. Following the applicant's assurance on this point, the OSS had no further comments. However, as the application seeks consent for the erection of a permanent building it will not of course be possible to reinstate that part of the common occupied by the substation.

²Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest.

12. Although the works may cause some disruption to free access across the common whilst they are being carried out, only the working area will be fenced off at any one time, which means that over the duration of the works, which will be relatively short anyway, an area of 20m x 20m will be inaccessible to the public, after which the fencing will be removed. For obvious reasons, the substation will not be publicly accessible, but it will occupy only a very small area of the common.
13. In view of the above, I consider that the works will not unacceptably restrict public rights of access over the common.

Nature Conservation

14. Natural England has not objected to the application and there is no evidence before me which leads me to think that the works will harm any statutorily protected sites or other nature conservation interests.

Conservation of the landscape

15. Historic England (HE) does not object to the principle of the replacement transformer, but has concerns about the positioning and appearance. It advised that Hempton Common is a key parcel of open land which has the Hempton Conservation Area to the south and east, straddling the perimeter highways. It considers that the replacement substation would be a far more visually intrusive unit than the existing pole mounted transformer, and being a very strong artificial green it would not be harmonious with the surrounding greenery. The position in an open area of the common had the potential to impact on both the setting of the conservation area and the landscape of the common land. It recommended that the location and the colour be reconsidered, preferring a smaller unit, and that an appropriate screen planting scheme with a native mix would assist with reducing any impact.
16. The applicant responded that the size of the substation is standard and is paramount to deal with the electrical load on the network and the properties it would supply. A smaller unit would not have the functional capacity to deal with the demand of the network. In addition, a 3x3m GRP is used for safety reasons and it securely houses the infrastructure away from public interference. However, the applicant has agreed to provide screening as required by HE to minimise the visual impact of the unit on the common and that the GRP unit will be dull brown which would be more suited to the natural surroundings.
17. Inevitably, the substation will have some impact on the landscape. However, it will be relatively small in size and I accept that it is the minimum size required to function effectively. The change of colour and screening arrangements will help to minimise any visual intrusiveness. The fencing will be of short duration and will not cause any long term visual harm. I consider therefore that the impact on the landscape of the common will not be significant and is justified by the benefits to the local community which the works will deliver.

Archaeological remains and features of historic interest

18. Neither HE nor the local authority archaeological service raised any concerns about the proposed works, and there is no evidence before me to indicate that they will harm any such remains or historic features.

Conclusion

19. Defra's policy guidance advises that *'works may be proposed in relation to common land which do not benefit the common, but confer some wider benefit on the local community, such as minor works undertaken by a statutory undertaker (e.g. a water utility) to*

provide or improve the public service to local residents and businesses. In such cases, our expectation is that applications for such purposes on common land are more likely to be successful under section 16 of the Act, so that an exchange of land is proposed and can be taken into account. An application for consent to such works under section 38 will rarely be granted unless there are convincing reasons why an application under section 16 cannot be pursued. Exceptionally, however, consent may be appropriate where the works are of temporary duration (such as a worksite) or where the works will be installed underground (such as a pipeline or pumping station), the proposals ensure the full restoration of the land affected, and the works confer a public benefit'.

20. I am satisfied that the application works accord with this policy objective because they will not materially harm the interests outlined in paragraph 7 above and will confer a wider benefit to the local community by improving the reliability of the electricity supply to local properties. I conclude therefore that consent should be granted subject to the conditions set out in paragraph 1.

Richard Holland